

## RESOLUTION # 8

### TRANSFER OF DEVELOPMENT RIGHTS (TDR)

1           **WHEREAS**, Transfer of Development Rights, or TDR, offers a tool to achieve both  
2 land preservation and economic growth by directing development from farmland, historic and  
3 environmentally sensitive sites to where this development is most desired and  
4 appropriate; and

5           **WHEREAS**, by harnessing forces in the real estate market, TDR can enable  
6 landowners to access the equity from their land without having to convert their land to  
7 nonagricultural uses, such as residential or commercial development; and

8           **WHEREAS**, the Pinelands Development Credit (PDC) program, New Jersey's first  
9 TDR program, instituted in 1981, has to date resulted in the permanent protection of more  
10 than 56,000 acres of environmentally sensitive forest and agricultural land in the New Jersey  
11 Pinelands; and

12           **WHEREAS**, despite the long history of the program being established in the  
13 Pinelands, much remains unpreserved, due largely to limitations on **where** Pinelands PDC  
14 credits may, and must, be used (i.e. only within the Pinelands itself, and even there many  
15 areas can develop without the use of PDCs); and

16           **WHEREAS**, in 2004, the Highlands Water Protection and Planning Act (N.J.S.A.  
17 13:20-1 et seq.) was enacted, which included the establishment of a TDR program as a key  
18 component to provide equity protection to impacted landowners; and

19           **WHEREAS**, the Highlands Water Protection and Planning Act relies on municipalities  
20 to voluntarily participate in becoming receiving areas for Highlands Development Credits; and

21           **WHEREAS**, despite statutory incentives and grants from the Highlands  
22 Commission, 16 years later, no receiving areas have been established to accept Highlands  
23 Development Credits, and therefore no market for these credits currently exists; and

24           **WHEREAS**, the cost of state preservation programs which deprive landowners of

25 value in their land in order to provide benefits which are enjoyed by the entire state should be  
26 borne by the entire state, and not be shouldered entirely by the region being preserved; and

27 **WHEREAS**, under the State TDR Act, Woolwich Township, Gloucester County, and  
28 Berkeley Township, Ocean County, have enacted TDR ordinances, however neither have  
29 yet successfully either marketed their receiving areas or provided the infrastructure  
30 necessary to create a viable market for credits; and

31 **WHEREAS**, particular concerns have been raised in Woolwich Township about a  
32 decision to continue with the program, with no ability for a landowner to “opt out,” even as  
33 TDR credits have yet to sell for receiving area development during the program’s lifetime;  
34 and

35 **WHEREAS**, to provide landowner relief the Woolwich TDR Bank held a credit auction  
36 in 2016 leveraging \$5,000,000 from the State TDR Bank for the purchase of 274.5 credits  
37 from 16 properties, at a total cost of \$6,978,000, and resulting in the preservation of 817  
38 acres bought at auction; and

39 **WHEREAS**, property owners whose land was “down-zoned” from two acres to 15  
40 acres and who did not participate in the TDR auction have seen falling land values and are  
41 left without an investment similar to that involved in the Farmland Preservation program,  
42 where the landowner receives a monetary value for selling the non-agricultural development  
43 rights of the land; and

44 **WHEREAS**, acknowledging the difficulty municipalities have had reestablishing TDR  
45 programs, a State TDR Task force, which included staff of the State Agriculture Development  
46 Committee, NJDA and New Jersey Farm Bureau, was created to discuss ways to foster use  
47 of TDR and other cluster provisions; and

48 **WHEREAS**, efforts of the State TDR Task Force culminated in an August 2010  
49 report that outlined specific recommendations, which included amending the Municipal Land  
50 Use Law to create enhanced provisions for tools such as non-contiguous and lot-size  
51 averaging; and

52           **WHEREAS**, on August 7, 2013, P.L. 2013, c.106 amended the Municipal Land Use  
53 Law to specifically authorize use of these density transfer techniques to provide  
54 municipalities a variety of development options as recommended in the Task Force report.

55           **NOW, THEREFORE, BE IT RESOLVED**, that we, the delegates to the 107<sup>th</sup> State  
56 Agricultural Convention, assembled in Atlantic City, N.J., on February 9-10, 2022, support  
57 the permanent protection of New Jersey's farmland, historic and natural resources through,  
58 among other methods, the judicious and market-aware use of Transfer of Development  
59 Rights.

60           **BE IT FURTHER RESOLVED**, that we strongly urge coordinated efforts by and  
61 among the various New Jersey state agencies to work with the State TDR Bank with regard  
62 to establishing receiving areas necessary to drive demand for Highlands and Pinelands PDC  
63 credits.

64           **BE IT FURTHER RESOLVED**, that we support prior bills that established a program  
65 that enables the redemption of Highlands and Pinelands Development Credits statewide  
66 which was designed to specifically motivate the purchase of Highlands and Pinelands TDR  
67 credits in exchange for approval of projects that may or may not be in the Highlands or  
68 Pinelands, but anywhere in the state.

69           **BE IT FURTHER RESOLVED**, that we support the participation of the Department  
70 and the State Agriculture Development Committee (SADC) in helping to implement a New  
71 Jersey Future Task Force report of recommendations to encourage the use of TDRs at both  
72 the municipal level and regionally through changes to relevant statutes, regulations, policies  
73 and programs as recommended in the State Plan.

74           **BE IT FURTHER RESOLVED**, that we support the use of municipal non-contiguous  
75 clustering pursuant to N.J.S.A 40:55D-1, et seq. as a way of achieving development transfers  
76 without disrupting underlying zoning by creating a voluntary program to transfer development  
77 potential from areas where preservation is desirable to areas intended to support new  
78 development.

79                   **BE IT FURTHER RESOLVED**, that the agricultural community should monitor the  
80 implementation of this law at the municipal level to maximize landowner protections and  
81 assess this program's feasibility as an equity-enhancement opportunity for agricultural  
82 landowners.

83                   **BE IT FURTHER RESOLVED**, that we strongly urge coordinated efforts by and  
84 among the various New Jersey state agencies to aid municipalities interested in TDR, in  
85 particular, with regard to establishing the receiving areas and demonstrating a market for the  
86 TDRs, necessary to drive demand for TDR credits.

87                   **BE IT FURTHER RESOLVED**, that we urge municipalities to engage with their  
88 planners, agricultural advisory committees, and the state to identify opportunities for use of  
89 TDR, non-contiguous clusters and other density transfer techniques.

90                   **BE IT FURTHER RESOLVED**, that we strongly urge any municipality or regional  
91 entity establishing or with established TDR programs to ensure that landowner equity is  
92 given the utmost consideration, and protected in the long term, by either creating lasting,  
93 viable markets for TDR credits or discontinuing TDR programs promptly if found to be  
94 inoperable, consistent with the State TDR Act, and that in lieu of a viable program, including  
95 adequate funding, with no TDRs applied, the program in that area be terminated.